IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 300 of 2003
in
SPECIAL CIVIL APPLICATION No 5429 of 2002

with

CIVIL APPLICATION No 1846 of 2003

Date of decision: 15-10-2003

SUNNI MUSLIM WAQF COMMITTEE

Versus

SAIKH ABDUL AZIZ GULAM MOHIYUDDIN

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice J.N. Bhatt, Judge

Whether appro

For the Appellant Mr.G.M.Joshi, Adv.

For the Respondent Mr.I.A.Patel, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Admit.

#. Shaikh Abdul Aziz Gulam Mohiyuddin (respondent) was working as a Personal Assistant to the President of Sunni Muslim Waqf Committee (appellant-original petitioner). He tendered resignation on July 27, 1996. He withdrew it on August 5, 1996. Thereafter, he raised an industrial dispute which was referred to the Labour Court for adjudication. He prayed before the Labour Court for

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reinstatement with all benefits. The case of the appellant has been that the respondent tendered resignation voluntarily, and it had been accepted before he sought withdrawal thereof. However, the Labour Court allowed the claim of the respondent, and ordered reinstatement with full backwages. The appellant challenged this order before the learned Single Judge by way of Special Civil Application No.5429 of 2003. By an order dated July 29, 2002, the petition has been rejected. As such, the order of the learned Single Judge has been challenged through this Letters Patent Appeal.

#. After considering the rival contentions advanced by the learned counsel for the parties, the learned Single Judge came to the following conclusion:

"2. On going through the award of the Labour Court it appears that though the respondent had tendered resignation within six days he had withdrawn it by sending a telegram to the petitioner. Again a letter was also written to the petitioner to this effect. There is nothing on record to show that the resignation of the respondent was accepted by the petitioner and due intimation with regard to the same was given to the respondent. On the contrary, from award of the Labour Court it is clear that the concerned Rules with regard to the acceptance of the resignation were not followed by the petitioner. According to the Rules, it is only the Committee which has the power to accept the resignation. In this case, it was the President of the petitioner who had accepted it and the same was not placed before the Committee. The resignation therefore, cannot be said to have been duly accepted. Secondly, it is also clear from the

> award of the Labour Court that the said resignation was tendered by the respondent under pressure and upon assurance given by the President of the petitioner that they would be taken back in service later. In such circumstances, the resignation cannot be termed as voluntary resignation. I am, therefore, in total agreement with the finding of the Labour Court. ....The petition is, therefore, dismissed."

#. Both, the Labour Court and the learned Singe Judge, having come to the same conclusion on crucial facts of the case, we have difficulty in coming to a different conclusion. However, the learned counsel for the appellant submitted that the appellant is a small Committee having no sources to pay the backwages allowed by the Labour Court and also to take back the respondent in service since he has lost confidence of the President of the Committee. However, he fairly accepts the suggestion that in case the respondent is taken back in service within fifteen days, the amount of backwages will be restricted to 50% to be paid within two months. The learned counsel for the respondent submits that some higher percentage of backwages be allowed.

#. We think, in the totality of circumstances, it would be just and proper to award 50% backwages to the respondent. Consequently, the appeal is disposed of in the terms that the respondent shall be reinstated back in service within fifteen days from today, and he will be paid 50% of the backwages within a period of two months from today. We hope that the respondent will work in such a way that the confidence lost by the appellant in him is restored.

#. No orders on Civil Application.

(BHAWANI SINGH)
CHIEF JUSTICE

(J.N.BHATT)
JUDGE

(sunil)